IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1430 of 2003
with
SPECIAL CIVIL APPLICATION No 1432 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DELIPKUMAR RAMKALAB CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:
1. Special Civil Application No. 1430 of 2003
MR SATISH R PATEL for Petitioner
MR RC KODEKAR, AGP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/06/2003

COMMON ORAL JUDGEMENT

1. Heard Mr.S.R.Patel, learned advocate for the petitioner and Mr.R.C.Kodekar, learned AGP for the respondents.

2. Both the matters are related as one is co-detenu of Special Civil Application No.1430 of 2003. In both the matters, Rule has been issued by this Court [Coram : P.B.Majmudar,J.] on 14.02.2003, made it returnable after six weeks. In both the matters, affidavit-in-reply has filed by the Detaining Authority as well as State Government. Both are taken on record. The copies thereof have been served to the petitioner. The order of detention dated 18.01.2003 passed by the Commissioner of Police, Ahmedabad City under Section 3(1) of the Gujarat Prevention Anti-Social Activities Act, 1985 [hereinafter referred to as the "PASA Act"], has been challenged by the petitioner in both the matters. In Special Civil Application No.1430 of 2003, the Detaining Authority has executed the order of detention, the petitioner was detained in Porbandar District Jail and in Special Civil Application No.1432 of 2003, the Detaining Authority has executed the order of detention, the petitioner was detained in Rajkot District Jail.

3. Mr.S.R.Patel, learned advocate for the petitioner in each petition has raised the contention that at the time, when the order of detention has been passed, both the detenu were in judicial custody. The second contention has raised by Mr.Patel that in both the cases, the statements of the secret witnesses were recorded by the Sponsoring Authority on 17.01.2003 and the same were verified by Detaining Authority on 18.01.2003 and on the very same day, the order of detention has been passed by the Detaining Authority in both the petitions. Therefore, he has submitted that the Detaining Authority has mechanically passed the order of detention without application of mind and his case is covered by the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and anothers, reported in 2000 (3) GLR 2696 and in respect to the detention about the judicial custody, he has submitted that this question is decided by this Court in Special Civil Application Nos.2866, 2867 and 2868 of 2003 decided on 10.06.2003. He has also submitted that in view of the aforesaid two decisions, the order of detention is required to be vitiated.

4. Mr.R.C.Kodekar, learned AGP for the respondents has submitted that the Detaining Authority has rightly been passed the order of detention, while considering all the material placed before him by the Sponsoring Authority. He has submitted that the Detaining Authority has also considered unregistered offences as well as registered offences against the petitioner and

ultimately, subjective satisfaction of the Detaining Authority was found on record, it is to be true and, therefore, he has submitted that the order of detention has rightly been passed by the Detaining Authority which is legal and valid and no interference is necessary by this Court.

5. In respect to Special Civil Application No.1430 of 2003, the petitioner is in judicial custody and in respect to Special Civil Application No.1432 of 2003, the petitioner is not in judicial custody, at the time when the order of detention has been passed in both the petitions. The contention raised by Mr.Patel that on the date of verification of the statements of the secret witnesses by the Detaining Authority, on the very same day, the order of detention has been passed. This contention is applicable in both the cases.

6. I have considered the submissions made by both learned advocates. I have perused the record of both the cases and I have also considered the reply filed by the Detaining Authority as well as State Government. The said contention raised by Mr.Patel is squarely covered by the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and anothers, reported in 2000 (3) GLR 2696. In respect of Special Civil Application No.1430 of 2003, when the petitioner was in judicial custody, the decision of this Court in Special Civil Application Nos.2866, 2967 and 2868 of 2003 is squarely applicable to the facts of this case because at the time of passing the order of detention, likelihood bail application of the petitioner has not properly examined by the Detaining Authority. Even on the same day, the order of detention has been passed on which the verification itself is illegal and arbitrary. The subjective satisfaction of the Detaining Authority must have justified from the record which apparently in given case, on the same day, such exercise would not be possible and, therefore, according to my opinion, in both the cases, relying upon the aforesaid decisions, the order of detention are required to be vitiated.

7. In the result, the present petitions are allowed. The order of detention dated 18.01.2003 passed by the Commissioner of Police, Ahmedabad , against the detenu Shri Dilipkumar Ramkalab Chauhan, who is petitioner in Special Civil Application No.1430 of 2003, detained at Porbandar District Jail and Shri Prakash Santtaram Jadav, who is petitioner in Special Civil Application No.1432 of 2003, detained at Rajkot District Jail, are hereby

quashed and set aside. The petitioners, unless are required to be detained in some other case, be released forthwith. Rule is made absolute accordingly in each petition. Direct service is permitted.

[H. K. Rathod,J.]

vijay